

Message Text

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QUOTE

C O N F I D E N T I A L LIMA 2275

FOR EB - BOEKER; L - FELDMAN; TREAS LANG - COMMERCE - ARRILL;
CIEP - GRANFIELD

FROM RUBIN

EO 11652: GDS

TAGS: OCEO, EFIN, ECOSOC, PE

SUBJECT: UN COMMISSION ON TNC - CODE OF CONDUCT AND BRIBERY
AGREEMENT

REF: LIMA 2252

1. AT DINNER WITH VALDEZ (CHAIRMAN) IMMEDIATELY FOLLOWING
MXY TELECON WITH FELDMAN, I PRESSED IN MOST VIGOROUS TERMS
FOR ACTION HERE RE ISSUE OF BRIBERY, ETC. I STATED THAT
INITIATIVE OF USA WAS TAKEN LARGELY IN RESPONSE TO CONCERN
OF DEVELOPING NATIONS AND THAT USA WAS PREPARED TO CONSIDER
EXCHANGE OF INFORMATION AT LEAST A SUBSTANTIAL PART OF
WHICH WAS AVAILABLE ONLY TO HOME GOVERNMENTS. I ALSO SUG-
GESTED THAT THE PRESENT WAS A PROPITIOUS MEMENT WHICH
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OUGHT TO BE SEIZED, SINCE THE COMMISSION HAD BEFORE IT

THE MANDATE OF THE GENERAL ASSEMBLY AND THE EXPRESSED CONCERN AND DESIRE BY THE USA TO ACT TO FULFILL THAT MANDATE. VALDEZ RESPONDED WITH STATEMENT OF SERIOUSNESS OF BRIBERY ISSUE IN TERMS OF EFFECTS ON DEVELOPING NATIONS' ABILITY TO PURCHASE ON BEST COMPETITIVE TERMS AND STATED THAT BRIBERY HAD COST LDC ECONOMIES MANY MILLIONS OF DOLLARS OF BADLY NEEDED FOREIGN EXCHANGE. HE ASKED ABOUT SPECIFICS OF U.S. PROPOSAL. I REFERRED TO POINTS FOR INCLUSION IN AN INTERNATIONAL AGREEMENT CONTAINED IN MY STATEMENT AT THE COMMISSION OF MARCH 5, BUT SAID THAT I COULD CIRCULATE A CONFERENCE ROOM PAPER CONTAINING BASIC ELEMENTS OF THAT STATEMENT IF THAT COULD BE HELPFUL. HE SUGGESTED I DO SO AND I PROPOSE TO DO IT, INCLUDING SUGGESTIONS FOR MODALITIES OF WORK AS SOON AS U.S. POSITION ON THIS IS CLEAR. IN CONCLUSION OF MY CONVERSATION ON THIS SUBJECT WITH VALDEZ, I STRESSED THE FACT THAT WHILE THE ISSUE OF BRIBERY TRANSCENDS THAT OF TNC'S THE COMMISSION HAS A BETTER POSSIBILITY OF EFFECTIVE ACTION THAN ANY OTHER EXISTING INTERNATIONAL BODY, THAT IT HAS A SPECIFIC MANDATE FROM THE G.A. AND THAT IT WOULD BE A MISTAKE TO DECIDE MERELY TO GO BACK TO ECOSOC FOR FURTHER INSTRUCTIONS.

2. DESPITE ENCOURAGING TONE OF ABOVE AND WITHOUT PREJUDICE TO MY DELEGATION MAKING A STRENUOUS EFFORT TO ACHIEVE AFFIRMATIVE ACTION HERE, I MUST POINT OUT THAT CIRCUMSTANCES DO NOT FAVOR MUCH MORE THAN A GENERAL AFFIRMATION OF THE DESIRABILITY OF AN INTERNATIONAL AGREEMENT:

A. AT BEGINNING OF WORK OF THIS SESSION, WHEN I STATED THAT WE EXPECTED TO MAKE A MAJOR PRESENTATION ON CORRUPTION ISSUE IN THE COURSE OF THE FIRST WEEK, ROUGE (FRANCE) EXPRESSED DISTRESS AT THE HABIT OF THE U.S. OF NOT DISCUSSING SUCH INITIATIVES WITHOUT COLLEAGUES IN TIME FOR ADVANCE CONSULTATION WITH CAPITALS AND FOR CONSIDERATION. I SAID TO HIM THAT THERE HAD BEEN EARLY NOTICE TO COME IN PARIS, BUT HE THOUGHT THIS NOTICE WAS INADEQUATE BOTH IN MANNER AND IN SUBSTANCE SINCE NOT ENOUGH DETAILS HAD BEEN GIVEN FOR CONCRETE

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CONSIDERATION. WHETHER FOR THIS REASON OR DEEPER CONCERNS, ROUGE HAD SUBSEQUENTLY INDICATED THAT FRENCH DELEGATION HERE WILL GIVE MILD SUPPORT TO IDEA BUT HAS RESERVATIONS ABOUT THE MANDATE OF THE COMMISSION, ETC.

B. OTHER MEMBERS OF U.S. DELEGATION INDICATE THAT IN THEIR TALKS WITH OTHER WEO'S A SIMILAR RELUCTANCE TO PRESS THIS ISSUE AT THIS TIME EXISTS.

C. I DISCUSSED THE ISSUE WITH BHATT (INDIA) AT A BREAKFAST MEETING LAST WEEK AND EXTENSIVELY WITH PARSIE (IRAN) OVER THE WEEKEND. BOTH INDICATE DESIRE TO ASK ECOSOC ABOUT AUTHORITY OF COMMISSION, ETC. I SHALL RAISE THE ISSUE AGAIN TODAY AT A SCHEDULED LUNCH WITH BHATT AND OTHER G-77 MEMBERS.

D. QUESTION OF MANDATE OF COMMISSION TO TACKLE CORRUPTION ISSUE IS, I BELIEVE, A REAL ONE. PARA 6 OF UN RESOLUTION L/1437 (WHICH IS PARA THAT GIVES MANDATE TO COMMISSION) IS UNLIKE TITLE OF RESOLUTION AND PARAS 1 AND 2 IN THAT IT DOES NOT CONTAIN THE BROAD REFERENCE TO "TRANSNATIONAL AND OTHER CORPORATIONS, THEIR INTER-MEDIARIES AND OTHERS INVOLVED" BUT REFERS ONLY TO THE NARROWER CATEGORY OF "THE CORRUPT PRACTICES OF TRANS-NATIONAL CORPORATIONS". MEMBERS OF G-77 INDICATE THAT THIS LANGUAGE REFLECTS A DELIBERATELY NARROW MANDATE FOR THE COMMISSION. THEY DO NOT INSIST THAT THIS PROCEDURAL PROBLEM DEFINITELY BLOCKS CONSIDERATION OF BROADER ISSUE, BUT DO FEEL THAT ECOSOC MUST GIVE WIDER MANDATE BEFORE COMMISSION CAN BE SEIZED WITH ISSUE. IN ADDITION, AS SPEECH OF USDEL POINTED OUT, PROBLEM IS NOT ONE OF TNC'S AND INVESTMENTS, BUT ALSO ONE OF TRADE AND SALES BY PURELY DOMESTIC COMPANIES. THIS, TOO, GOES BEYOND MANDATE OF COMMISSION.

E. WITH U.S. INITIATIVE MADE ONLY ON FRIDAY AFTERNOON CONCRETE ADVANCE CONSULTATIONS WITH G-77 NOT POSSIBLE AND THEY COULD ONLY INFORM THEIR CAPITALS ON FRIDAY OR MONDAY, THUS NOT GIVING THEM MUCH TIME TO FORMULATE VIEWS. DELEGATES OF BOTH IRAN AND ARGENTINA ARE HOPING FOR REACTIONS FROM CAPITALS BEFORE END OF CONFERENCE, BUT

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FIGUERERO (ARGENTINA) STATED THAT THE ISSUES OF EXCHANGE OF INFORMATION, ETC. RAISED WERE COMPLICATED AND JURIDICAL IN NATURE. HE FELT THAT THE LEGAL COMPLEXITIES REQUIRED ANALYSIS AND THAT, SINCE THE MATTER WAS RAISED IN B.A. ONLY ON MARCH 5 BY HIM, ANY POSITIVE RESPONSE WAS DOUBTFUL. HE STATED THAT ONE PROBLEM SEEMED TO BE THAT THERE HAD BEEN NO ADVANCE NOTICE IN CAPITALS. I RESPONDED THAT THE COMMISSION HAD ITS MANDATE AND THAT THE DEVELOPING NATIONS HAD EXPRESSED MUCH CONCERN, TO WHICH THE USA PROPOSAL WAS A RESPONSE. HE SAID THAT WHILE G-77 APPRECIATED THE USA PURPOSE AND THAT THERE HAD TO BE A START SOMEWHERE, THE G-77 IN GENERAL FELT THAT A GENERAL ENDORSEMENT WITH PERHAPS A REQUEST TO ECOSOC TO EXPAND THE MANDATE OR TO SET UP A SPECIAL WORKING PARTY WITH LINKS TO THE COMMISSION WOULD BE PROPER STEP TO BE

TAKEN HERE.

3. IT IS MY FEELING THAT HE WILL NOT BE ABLE TO GET MUCH MORE THAN AN ENDORSEMENT AND A REQUEST TO ECOSOC TO ACT EITHER TO EXPAND THE MANDATE OR THE COMMISSION OR TO SET UP SOME SORT OF JOINT COMMISSION OR WORKING GROUP UNDER THE COMMISSION. THE WEO'S HAVE RESERVATIONS, AS THE DEPARTMENT KNOWS. SO, IN MY OPINION, DO THE DEVELOPING NATIONS WHO ARE PREPARED TO MAKE STRONG PUBLIC DECLARATIONS BUT FEAR EVENTUAL CONSEQUENCES OF WHAT MIGHT BE SEEN AS OVER-ZEALOUS RESPONSE TO PROBLEM. LDC'S CANNOT AFFORD TO BE NEGATIVE; BUT THEY CAN AND WILL USE THE PROCEDURAL ARGUMENTS ABOVE MENTIONED-- THE SCOPE OF THE G.A. MANDATE--PLUS THE WEO ARGUMENT THAT SUFFICIENT ADVANCE CONSULTATION IN CAPITALS HAS NOT TAKEN PLACE--TO TAKE ONLY A SMALL AND VERBAL "FORWARD STEP" HERE. AND TO SOME EXTENT, THEY HAVE MERIT IN THE ARGUMENT THAT THIS IS A NEW INITIATIVE AND THAT UNINSTRUCTED DELEGATES CANNOT BE EXPECTED TO TAKE WHAT MAY BE A DECISIVE DECISION IN A FEW SHORT DAYS.

4. THE U.S. DELEGATION WILL, DESPITE THE ABOVE, DO ALL POSSIBLE. MBUT IT SHOULD BE REALIZED THAT MORE AND MORE INITIATIVE HERE HAS PASSED INTO THE HANDS OF THE G-77. THE WEO'S ARE OUTNUMBERED AND NOT WELL ORGANIZED, BUT CAN, I BELIEVE, PREVENT G-77 FROM TAKING STEPS ADVERSE TO CONFIDENTIAL

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INTERESTS OF WEO'S. VIEWS OF WEO'S AND, PERHAPS, OTHER FACTORS LIKE ONGOING WORK ON THE OECD CODE AFFECT THE DECISIONS OF THE G-77. BUT IF THE G-77 IS OPPOSED, AN AFFIRMATIVE PROPOSAL CANNOT BE PUSHED THROUGH. STILL LESS IS IT POSSIBLE TO DO SO IF OUR ALLIES ARE THEMSELVES IN DISAGREEMENT. DEAN

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